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Insurance

C.R. PVA

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Reimbursement to Employees for Loss of Insurance
Benefits in the Performance of Duty or for Related
Reasons

1. This memorandum submits recommendations for your approval. Such recommendations are contained in paragraph 10.
2. Many Agency employees, as a normal part of their planning for the support of their families in the event of their disability or death, have purchased various forms of insurance such as life, accident, disability, and income replacement. Many life insurance policies and particularly policies with coverage for disability or death resulting from accident contain clauses which cancel the coverage in the event the individual is engaged in activities or traveling by means considered excessively hazardous. There also may be exclusions relating to mere presence in specific countries or geographic areas where civil strife or warfare is present or imminent.
3. Agency employees in the performance of their duties will be required from time to time to serve with disregard of the exclusion clauses of their insurance policies and in so doing they will negate the insurance protections established for their families. In the event death or disability

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were to occur, the individual or his beneficiaries would suffer actual dollar losses running in most cases to the thousands or even tens of thousands of dollars.

4. It has always been basic Agency policy that employees should not suffer financial losses attributable to the performance of directed duties. Historically, the Agency has vigorously attacked any general administrative regulations such as allowance and travel regulations which from time to time did monetary harm to the employee. Where legally possible the Agency has quickly corrected the situation or alternatively has devised supplementary allowances or claim procedures to prevent or minimize financial harm to the employee. A typical example was the Agency's early establishment of a policy and procedure to reimburse employees for loss or damage to their personal effects when such losses were attributable either to the travel requirements imposed upon them or to the hazards of the environments in which they were serving.

5. Consistent with this tradition, it is proposed that the Agency adopt a positive policy ^{to} ~~for~~ reimbursing employees for the loss of insurance benefits when such loss is directly attributable to their performance of official duties (including travel as directed by the Agency) or to their presence at Agency direction in an area affected by a general exclusion clause. Such reimbursement should not, we believe, be without limitation.

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Rather, we believe that there should be a limit which would be defensible as a matter of public policy but which would also permit full reimbursement at least in the majority of cases. We have no hard evidence on either standard to establish a suggested maximum. A limit of \$50,000 is proposed as a reasonable compromise which would not be made to appear a "windfall" on the one hand while not depriving survivors on the other hand. Further, denial of payment by an insurance carrier should not, in our opinion, be prima facie evidence of an entitlement to reimbursement. Rather, we believe that Agency management must itself determine in each case that the fact situation warrants payment in accordance with the proposed policy. In this connection, we propose to apply the standards developed by the Bureau of Employees' Compensation for determining whether an injury, illness, or death is incurred in the "performance of duty." These standards would not cover a loss of insurance benefits based solely on an individual's presence in an excluded area; in the latter case, the determination would be based on official Agency records documenting that the employee's presence in such area was at Agency direction.

6. An argument against this proposal may be based on the belief that the benefits of the BEC are the exclusive remedy for death or disability in the performance of official duties. We believe, however, that the payments contemplated under this policy are not benefits to the individual

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in compensation for death or disability. Quite the contrary. They represent reimbursement to the individual for insurance payments denied to him because his official duties caused him to disregard the exclusion clauses of his personal insurance policies.

7. We have received rulings from the Bureau of Employees' Compensation regarding analogous situations which would not offset such reimbursement against the benefits of the Federal Employees' Compensation Act. However, if the proposed policy appears otherwise acceptable, we would seek a formal ruling by BEC to ensure that the purpose of such reimbursement would not be defeated by a requirement that they be offset against FECA entitlement.

8. Such a policy would of course require an administrative mechanism for its implementation. We believe it would be consistent with the responsibilities of the Director of Personnel that he be charged with responsibility for administering this policy and ^{delegated} ~~obligated~~ authority to approve payments thereunder. However, we believe that final exercise of such authority should be based on the submission of a claim by the employee or survivor concerned which has been attested to by the Deputy Director concerned ^{or} ~~or~~ to the circumstances of the employee's assignment and the applicability of this policy to the claim. Except in most unusual cases, we propose that no claim be accepted by the Director of Personnel

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for adjudication until the insurance carrier (~~S~~) involved ^{had} ~~and~~ formally and finally denied payment based on a pertinent exclusion clause.

9. As to cost: We have considered alternative solutions, such as payment of special coverage insurance premiums by the Agency and reinsurance by the Agency to cover potential claims. Either course would require the almost impossible task of pre-identifying the employees potentially affected and the outlay of substantial premium payments by the Agency. The solution proposed is administratively simpler since the facts of each case will be known when it must be adjudicated. And there is, of course, the possibility that no payments would actually be made. Put another way, under other possible alternatives, the Agency would be required to make a substantial cash outlay in anticipation of payments which might never be required. We believe that the proposed solution is more economical as well as administratively simpler.

10. It is recommended that:

a. The following policy be adopted:

When an employee suffers death or disability in the performance of duty or otherwise under conditions of service directed by the Agency and under circumstances which negate an insurance benefit, the Agency shall accept a claim from or on behalf of the employee or his survivors, as

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appropriate, for reimbursement of such loss in ^{an} ~~one~~ amount not to exceed \$50,000.

b. The Director of Personnel be charged with responsibility for administering this policy, including the development of standards and procedures as required.

c. The Director of Personnel be authorized to approve the payment of claims under the policy upon his determination that payment of such claims, properly documented and attested to by the Deputy Director concerned as to the specific circumstances of the employee's assignment, is consistent with the policy stated and the rationale contained in this memorandum.

d. Approval of this policy be contingent upon obtaining a formal ruling from the Bureau of Employees' Compensation that such reimbursements would not detract from the entitlements of an employee or his survivors under the Federal Employees' Compensation Act.

Emmett D. Echols
Director of Personnel

Concur: _____
General Counsel

Concur: _____
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Concur: _____
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Concur: _____